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ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 BEDFORD STREET
STAMFORD, CT 06905-5619

EXAMINER

LUGO, CARLOS

ART UNIT PAPER NUMBER

3677

DATE MAILED: 05/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/816,918

Applicant(s)

KAMINSKY ET AL.

Examiner

Carlos Lugo

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 31-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☒ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-30, drawn to a concurrent dynamic pricing marketing and sales system, classified in class 705, subclass 26.
- II. Claims 31 and 32, drawn to a system providing buyer purchases choices, classified in class 705, subclass 27.
- III. Claim 33, drawn to a system for providing buyer and seller feedback, classified in class 705, subclass 26.
- IV. Claims 34-37, drawn to a method of offering inventory items for sale, classified in class 705, subclass 28.
- V. Claim 38, drawn to an article of manufacture using a computer program, classified in class 705, subclass 27.
- VI. Claims 39 and 40, drawn to a tool for providing a buyer and seller access to an inventory, classified in class 705, subclass 28.

2. The inventions are distinct, each from the other because of the following reasons:

- Inventions in Group I and Group II are distinct because Group II does not require that the price change.
- Inventions in Group I and Group III are distinct because Group I does not require that the seller can modified parameters of the buying options.
- Inventions in Group I and Group IV are distinct because a different method to perform the system.

- Inventions in Group I and Group V are distinct because Group I could use a different computer program to perform the system.
- Inventions in Group I and Group VI are distinct because Group I does not require that the seller set parameters to the price.
- Inventions in Group II and Group III are distinct because Group II does not require that the seller can modified parameters of the buying options.
- Inventions in Group II and Group IV are distinct because Group II does not require that the price change.
- Inventions in Group II and Group V are distinct because Group II could use a different computer program to perform the system.
- Inventions in Group II and Group VI are distinct because Group II does not require that the seller set parameters to the price.
- Inventions in Group III and Group IV are distinct because Group III does not require that the price change.
- Inventions in Group III and Group V are distinct because Group III could use a different computer program to perform the system.
- Inventions in Group III and Group VI are distinct because Group III does not require that the seller set parameters to the price.
- Inventions in Group IV and Group V are distinct because Group IV could use a different computer program to perform the system.
- Inventions in Group IV and Group VI are distinct because Group IV does not require that the seller set parameters to the price.

- Inventions in Group V and Group VI are distinct because Group V does not require that the seller set parameters to the price.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Groups II-VI, the search required for Group II is not required for Groups I, III-VI, the search required for Group III is not required for Groups I, II, IV-VI, the search required for Group IV is not required for Groups I-III, V and VI, the search required for Group V is not required for Groups I-IV and VI and the search required for Group VI is not required for Groups I-V, restriction for examination purposes as indicated is proper.

3. During a telephone conversation with Todd Oberdick on April 21, 2003 a provisional election was made without traverse to prosecute the invention of a concurrent dynamic pricing marketing and sales system, claims 1-30. Applicant in replying to this Office action must make affirmation of this election. Claims 31-40 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:
 - Elements 24,26,28 and 30 in Figure 1 and elements 36,46 and 48 in Figure 2 are not disclosed in the specification.

A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to

the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

5. **Claim 15 is objected** to because of the following informalities:

- Line 1, change "said sell" as --a sell--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. **Claims 1-4,6-8,11,15,18 and 20-30 are rejected** under 35 U.S.C. 102(e) as being anticipated by US Pat No 6,119,100 to Walker et al (Walker '100).

Regarding claim 1, Walker '100 discloses a dynamic pricing marketing and sales system comprising an inventory sales tool (WebPages) accessible to a plurality of buyers through at least one medium (200).

The inventory sales tool is effective to provide an indication of an available quantity of an item and a plurality of pricing schemes (Col. 4 Lines 25-32).

At least one of said pricing schemes permits at least one of said buyers to request an immediate purchase at an immediate purchase price (Col. 4 Lines 25-32).

At least one of said pricing schemes permits at least one of said buyers to request a deferred purchase at a deferred purchase price (Col. 2 Line 62 to Col. 3 Line 3 and Col 4 Lines 25-38 and 47-60).

As to claims 2 and 20-24, Walker '100 discloses that the medium is the Internet (a worldwide network of interconnected computers, Col. 11 Line 59).

As to claim 3, Walker '100 discloses that the system further comprises a buyer selectable shopping channels (152) that permits the buyer access to the inventory items based on a type of merchandise.

As to claim 4, Walker '100 discloses that the immediate purchase price decrease when no purchase requests are made for the product (Col. 4 Lines 53-55).

As to claim 6, Walker '100 discloses that the indication is effective to provide information related to purchase by all of the buyers (Col. 4 Lines 12 and 13).

As to claim 7, Walker '100 discloses that the item is made available for a limited duration of time (Col. 4 Lines 25-32).

As to claim 8, Walker '100 discloses that the immediate purchase price can fluctuate (depending on the demand of the product, Col. 4 Lines 47-60).

Also, the deferred purchase request includes an open order purchase request made by a first buyer. The open order purchase request includes an open price that will be filled if the open price matches the immediate purchase (list price).

As to claim 11, Walker '100 discloses that wherein a filled immediate purchase, it will decrease the available quantity of the item.

As to claim 15, Walker '100 discloses that the sell sets a minimum immediate purchase price (list price, Col. 4 Lines 25-32).

As to claim 18, Walker '100 discloses that the inventory items are composed of excess inventory (any type of good or service, Col. 4 Lines 12 and 13).

As to claims 25-30, Walker '100 discloses that the system further includes an indication showing the buyer purchase (Col. 7 Lines 38-47).

8. **Claims 1-3,6,7,11,12,14,15,18 and 20-30 are rejected** under 35 U.S.C. 102(e) as being anticipated by Egghead.com (Egghead).

Regarding claim 1, Egghead discloses a dynamic pricing marketing and sales system comprising an inventory sales tool (Web Page) accessible to a plurality of buyers through at least one medium (internet).

The inventory sales tool is effective to provide an indication of an available quantity of an item and a plurality of pricing schemes (Place an order to buy the item at a price or place a bid, sections "how to shop" and "auction bidding guide").

At least one of said pricing schemes permits at least one of said buyers to request an immediate purchase at an immediate purchase price (Place an Order).

At least one of said pricing schemes permits at least one of said buyers to request a deferred purchase at a deferred purchase price (Bidding Process).

As to claims 2 and 20-24, Egghead discloses that the medium is the Internet.

As to claim 3, Egghead discloses that the system further comprises a buyer selectable shopping channels (Superstores) that permits the buyer access to the inventory items based on a type of merchandise.

As to claim 6, Egghead discloses that the indication is effective to provide information related to purchase by all of the buyers (See "Check current Bid" section).

As to claim 7, Egghead discloses that the item is made available for a limited duration of time (see Auction Types in section "Auction Bidding Guide).

As to claim 11, Egghead discloses that wherein a filled immediate purchase, it will decrease the available quantity of the item.

As to claim 12, Egghead discloses that the inventory sales tool includes a minimum auction price. The deferred purchase request includes an auction purchase request that includes a bid purchase price (section "Auction Bidding Guide).

The auction purchase request is filled if the bid purchase price is not less than the minimum auction price and the bid purchase price is greater or equal to any

other bid purchase price submitted for a like quantity of items (See "Check current Bid" section).

As to claim 14, Egghead discloses that the seller sets the minimum auction price and a bid purchase price increment (see Check Current Bids on section "Auction Bidding Guide).

As to claim 15, Egghead discloses that the sell sets a minimum immediate purchase price (see Check Current Bids on section "Auction Bidding Guide).

As to claim 18, Egghead discloses that the inventory items are composed of excess inventory (see section "About Us").

As to claims 25-30, Egghead discloses that the system further includes an indication showing the buyer purchase (by email).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. **Claim 5 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,119,100 to Walker et al (Walker '100) in view of US Pat No 6,513,016 to Freeny (Freeny '016).

Walker '100 fails to disclose that the immediate purchase price increases a specified amount when an immediate purchase is made.

Freeny '016 teaches that is known in the art to increase a specified amount the immediate purchase price when an immediate purchase is made (Col. 8 Lines 4-15).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to increase a specified amount when an immediate purchase is made, as taught by Freeny '016, into a business method as described by Walker '100, in order to get some benefits if the demand of the product is higher.

11. Claims 9,10,13,16,17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,119,100 to Walker et al (Walker '100) in view of US Pat No 6,434,536 to Geiger.

Regarding claims 9 and 16, Walker '100 fails to disclose that the inventory sales tool includes a lot price containing a specified quantity of items and that the lot price and the specified quantity determine an average price for each item of the lot.

Walker '100' discloses that the items are sold individually and that the deferred purchase request includes a demand purchase request made by a first buyer.

Geiger illustrates an inventory sales tool that includes a lot price containing a specified quantity of items (hard drives) and that the lot price and the specified quantity determine an average price for each item of the lot (Figures 12-14).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a sale tool, as taught by Geiger, into an inventory sales tool as described by Walker '100, in order to be able to sell a large quantity of an item at a reasonable price.

As to claim 10, Walker '100 discloses that more than one buyer can try to obtain an item by a deferred purchase (placing a bid, Col. 4 Lines 25-32).

As to claim 13, Walker '100 discloses that the seller sets the price (Col. 4 Lines 25-32).

As to claim 17, Walker '100 discloses that the deferred purchase request includes an auction purchase request (Col. 4 Lines 25-32).

As to claim 19, Walker '100 discloses that the inventory items are composed of excess inventory (Col. 4 Lines 12 and 13).

12. Claims 9,10,13,16,17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Egghead.com (Egghead) in view of US Pat No 6,434,536 to Geiger.

Regarding claims 9 and 16, Egghead fails to disclose that the inventory sales tool includes a lot price containing a specified quantity of items and that the lot price and the specified quantity determine an average price for each item of the lot.

Egghead discloses that the items are sold by the quantity that the buyer wants and that the deferred purchase request includes a demand purchase request made by a first buyer.

Geiger illustrates an inventory sales tool that includes a lot price containing a specified quantity of items (hard drives) and that the lot price and the specified quantity determine an average price for each item of the lot (Figures 12-14).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a sale tool, as taught by Geiger, into an inventory sales

tool as described by Egghead, in order to be able to sale a large quantity of an item at a reasonable price.

As to claim 10, Egghead discloses that more than one buyer can try to obtain an item by a deferred purchase (placing a bid, see section "Auction Bidding Guide").

As to claim 13, Egghead discloses that the seller sets the price (see Check Current Bids on section "Auction Bidding Guide").

As to claim 17, Egghead discloses that the deferred purchase request includes an auction purchase request (see section "Auction Bidding Guide").

As to claim 19, Egghead discloses that the inventory items are composed of excess inventory (Col. 4 Lines 12 and 13).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents cited further show the state of the art with respect to business methods.
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo. The examiner phone number is (703)-305-9747. The fax number for correspondence before a final action is (703)-872-9326 and the fax number for correspondence after final action is (703)-872-9327. The email direction of the examiner is carlos.lugo@uspto.gov. The examiner can normally be reached on Monday to Friday from 9:30am to 6:30pm (EST). If the examiner is not available, please leave a message, including the application number and the examiner will answer the message as soon as possible.

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May 23, 2003



LYNNE H. BROWNE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3620